

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No.: 7,364,839 B2)
Issued: April 29, 2008) Group Art Unit: 1795
Inventors: Kei HAYASAKI et al.) Examiner: Kathleen DUDA
Application No.: 10/624,593) Conf. No. 7500
For: METHOD FOR FORMING A PATTERN AND)
SUBSTRATE-PROCESSING APPARATUS)

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentees petition the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is being paid by credit card.

The U.S. Patent and Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,364,839 B2 (the '839 patent) on April 29, 2008, with a patent term adjustment (PTA) of 99 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the USPTO had made an error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA accrue due to PTO examination delay and those time periods do not overlap. The court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate

time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentees request waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant for the '839 patent, in which patentees request a change in the PTA of the '839 patent based on determination in a manner consistent with the court's decision referred to above.

This Petition is being filed electronically and the \$400.00 petition fee, as set forth in 37 C.F.R. § 1.17(f), is being paid by credit card. If there are any fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 24, 2008

By: Charles E. Van Horn
for Richard V. Burgujian
Reg. No. 31,744

Enclosures
RVB/FPD/klm

Charles E. Van Horn
Reg. No. 40,266

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Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The U.S. Patent and Trademark Office (PTO) issued the subject U.S. Patent No, 7,364,839 (the '839 patent) with a patent term adjustment of 99 days. Applicants filed a Notice of Error in Determination of Patent Term Adjustment, along with the Issue Fee payment, on March 13, 2008, notifying the PTO that Applicants' calculations determined the patent term adjustment to be 39 days, provided the patent issued in a timely manner. The patent issued on April 29, 2008. The three year pendency date for determination of patent term adjustment is July 23, 2006.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentees submit it is entitled to a total patent term adjustment of 65 days which is the sum of 26 days of patent term adjustment due to exceeding three year pendency and 39 days due to U.S. PTO delay in prosecution.

Customer No. 22,852
Attorney Docket No. 04329.3100

If there are any fees due in connection with the filing of this request, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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